



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MICHAEL CASSEY,
Petitioner,

vs.

HENRY MCMASTER, STATE OF SOUTH
CAROLINA, and ROBERT M. STEVENSON,
Respondents.

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CIVIL ACTION NO. 3:08-2137-HFF-JRM

ORDER

This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Respondent's motion for summary judgment be granted and the petition dismissed without prejudice so Petitioner can proceed in state court. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on March 4, 2009, and Respondents filed objections to the Report on March 23, 2009. Petitioner failed to file any objections to the Report. In the absence of such objections, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

In their objections, Respondents contend, based on the Magistrate Judge's discussion throughout the Report, that dismissal should be with prejudice rather than without prejudice. The Magistrate Judge thoughtfully concluded both that Petitioner's claims were time barred and that those claims lacked merit. In view of the entire report, the Magistrate Judge's conclusion was most likely a typographical or technological error. Thus, the Court agrees that dismissal should have been with prejudice.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report, to the extent it is not inconsistent with this Order, and incorporates it herein. Therefore, it is the judgment of this Court that Respondent's motion for summary judgment is **GRANTED** and the petition is **DISMISSED** *with prejudice*.

IT IS SO ORDERED.

Signed this 3rd day of April, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.